Filed 6/19/19 In re J.J. CA1/5

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re J.J., a Person Coming Under the Juvenile Court Law.	
SAN FRANCISCO HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. S.F. et al., Defendants and Appellants.	A154564 (San Francisco City and County Super. Ct. No. JD16-3257)

The maternal grandfather (Grandfather) and mother (Mother) of a dependent minor, J.J., contend the trial court abused its discretion by declining to place J.J. with Grandfather despite the fact he had been screened and approved under the resource family approval process (Welf. & Inst. Code, § 16519.5 et seq.).[1] We conclude the record supports the court's decision and affirm.

BACKGROUND

A.

The resource family approval process is intended to be an expedited assessment of individuals and families to provide foster care and become legal guardians or adoptive families for dependent children. (§ 16519.5, subd. (a).) A resource family is "an

[1] Undesignated statutory references are to the Welfare and Institutions Code.

individual or family that has successfully met both the home environment assessment standards and the permanency assessment criteria" established by statute and the State Department of Social Services. (§ 16519.5, subds. (c), (d).) The law is designed to eliminate the need for a second approval process for adoption or legal guardianship of the child. (§ 16519.5, subd. (c)(4)(A); see Seiser & Kumli, Cal. Juvenile Courts Practice and Procedure (2018) § 2.127[9], p. 2-459.)

In the process, relatives of the dependent child are given "preferential consideration" for placement. (§ 361.3, subd. (a).) " 'Preferential consideration' means that the relative seeking placement shall be the first placement to be considered and investigated." (§ 361.3, subd. (c)(1).) However, approval as a resource family does not guarantee that the court will place the child with the approved relative. (§ 16519.5, subd. (c)(6) [approval "does not guarantee an initial, continued, or adoptive *placement* of a child with [the] resource family" (italics added)].) Rather, when determining whether a child should be placed with a relative, the court must consider factors listed in section 361.3, subdivision (a), the most important of which is the best interest of the minor. (*Alicia B. v. Superior Court* (2004) 116 Cal.App.4th 856, 862–863 [minor's best interest is the "linchpin of a section 361.3 analysis"].)

The State Department of Social Services has adopted written directives, pending adoption of regulations, to administer the approval process. (§ 16519.5, subd. (f)(1)(A).) We deny Grandfather's request for judicial notice of the written directives as unnecessary. (See *County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861, 866, fn. 3; *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 45–46, fn. 9 ["request for judicial notice of published material is unnecessary"; "[c]itation to the material is sufficient"].)

B.

Before J.J.'s dependency case, Mother had lost custody of three older children in dependency proceedings.

J.J., whose father is deceased, was detained and placed in foster care at age three. Mother had allowed J.J. and one of J.J.'s older siblings to be present during a fight and

placed into a stolen car without a car seat or proper restraints; the car crashed following a high-speed chase with police, causing injuries to J.J. including a broken nose and lacerations.

In October 2016, the court removed J.J. from Mother's care and placed her in foster care. The court bypassed reunification services based on Mother's prior dependency history. (See § 361.5, subd. (b)(10)). We rejected Mother's challenge to the removal and bypass of services. (*S.F. v. Superior Court* (Feb. 23, 2017, A149933) [nonpub. opn.].) The court adopted a permanent plan of legal guardianship and reduced Mother's visitation to once a month. The visitation order was affirmed on appeal. (*In re J.J.* (Feb. 20, 2018, A151326) [nonpub. opn.].)

Mother repeatedly disrupted J.J.'s dependency proceedings. After a May 2017 hearing, she threatened the counsel and social worker for the San Francisco County Human Services Agency (Agency) and assaulted the social worker. The court issued a five-year restraining order protecting the social worker. Mother made multiple unsubstantiated allegations of abuse by J.J.'s foster mother. She repeatedly interrupted court hearings with profanity-laced outbursts. She also accused the Agency of dishonesty and bias against her, and she brought members of organizations called "CPS Corruption" and "Family Against Corruption" as support to meetings and hearings.

C.

Grandfather began the resource family approval process in August 2016; his fiancée began the process in the summer of 2017. J.J. had a close relationship with Mother and Mother's extended family, and she wanted to live with relatives. After much delay, primarily due to difficulty obtaining Grandfather's criminal records from Alameda County (which was digitizing its records), Grandfather was approved as a resource family in September 2017. The Agency recommended a permanent plan of legal guardianship with Grandfather and discretion to allow unsupervised visitation.

D.

Subsequently, however, several issues arose that caused friction between Grandfather and the Agency and ultimately led the Agency to oppose placement with Grandfather.

In about September 2017, Grandfather's supervised visits with J.J. were moved closer to the foster family, about 60 miles from his home, and he started missing some visits. The court conditioned Grandfather's unsupervised visitation on safety planning in light of Mother's interference with relative placements for her other children.

Grandfather missed the first safety meeting in October 2017. At the rescheduled meeting a month later, he brought Mother and a representative of CPS Corruption but not his fiancée, who would be living with J.J. During the meeting, the Agency recommended that Grandfather bring together people in his life to form a safety network to help protect J.J. He later testified the Agency wanted him to hire seven people in his neighborhood to contact the police or Agency if they saw Mother. Grandfather thought it would be dangerous to do so because his neighbors were alcoholics and addicts he did not know personally. Instead, he moved to a more expensive private-security building and did not let Mother know where he moved. The Agency denied that it asked Grandfather to hire anybody.

The Agency also sought further information on Grandfather's mental health and child welfare history. There is some confusion on this issue. The Agency asked Grandfather to sign a release for mental health records related to what the Agency understood was a 2010 suicide attempt Grandfather had reported during the resource family approval process. Grandfather said that it happened in 1997 or 1998, and he described it as an accident, not a suicide: he had a construction business at the time, and he fell off a roof because he was crying over his mother's death and took a wrong step. The Agency also sought the release because Grandfather was being treated for posttraumatic stress disorder at the Veteran's Administration.

In March 2018, the Agency agreed to accept a release of the mental health records for only the last 10 years. Grandfather initially said he would sign it. But he later

changed his mind, stating he consulted an attorney and the records were unnecessary because he had undergone an eight-hour psychosocial assessment during the resource family approval process. He also did not want to release more information because "everything they asked me to do they use against me." Minor's counsel expressed concern that Grandfather's delay in signing the releases reflected equivocation about taking J.J.

In November 2017, Grandfather disclosed he had two adult daughters who had been adopted at birth in Indiana after they were removed from their mother. His name was not on their birth certificates. One of the daughters contacted Grandfather as an adult and said she had been abused, apparently in foster care. Grandfather disclosed this information while discussing foster care with minor's counsel. In December 2017, the Agency asked Grandfather to sign a release for the Indiana records; he did not do so until April 2018. He said he delayed because the first proffered release (pending until March 2018) also covered his mental health records. The Agency had not received the Indiana records by the final placement hearing on May 22, 2018.

In the meantime, the Agency reported Grandfather's visits with J.J. were still supervised, not unsupervised, because he did not follow up on the safety plan for his new home, and the Agency no longer supported unsupervised visitation. Minor's counsel said interruptions in visitation (apparently a reference to Grandfather's missing visits after they were moved) may also have affected the plan for unsupervised visits.

By April 2018, the foster family wanted to adopt J.J., and J.J. wanted to remain in that placement.

E.

At the May 22, 2018 final placement hearing, the Agency cited several reasons for opposing placement with Grandfather: his unknown mental health history; his prior loss of parental rights for which they had not yet received any records; his refusal to participate in a safety plan; his use of racial epithets during a phone conversation with Agency personnel; and potential memory lapses as evidenced by his claim to not to remember a conversation with the social worker two days prior.

Minor's counsel opposed placement with Grandfather because he seemed "enmeshed" with Mother. Minor's counsel did not believe he could to keep J.J. safe given Mother's history of sabotaging relative placements for her other children, which led to two of her children being "AWOL for quite some time," and given his unwillingness to engage in safety planning to keep Mother away from the home.

Grandfather was not represented by counsel, but Mother's counsel spoke on his behalf. She argued Grandfather was the best placement for J.J. because he had moved to a new home to address the Agency's safety concerns; he never intentionally withheld relevant information during the resource family approval process; he signed the release for the Indiana child welfare documents; he explained his mental health history in the family resource process; there were no safety concerns regarding his visits with J.J., and so his recent mental health history was irrelevant; and J.J. should live with family.

The court denied placement with Grandfather, noting general concerns about Grandfather's failure to participate in a safety plan, memory lapses, lack of information about Grandfather's adopted children, and use of racial epithets. In particular, the court focused on the unresolved mental health issues. The court considered Grandfather's possible suicide attempt, even 10 years in the past, to be a very serious matter that required more information, and it observed, "[w]e don't know a lot about his mental health history other than we don't have it. And this [resource family approval] process . . . has been going on for two years, . . . [a]nd we don't have the information we need to have . . . ." Grandfather offered to sign releases of mental health information, but the court approved legal guardianship with the foster parents as J.J.'s permanent plan in lieu of placement with Grandfather.

DISCUSSION

Grandfather and Mother argue the juvenile court erred by denying placement with Grandfather on the ground he failed to cooperate with child welfare and mental health reviews that were unjustified duplications or extensions of the resource family approval process. We disagree.

We review a placement decision for abuse of discretion. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1060.) We must defer to the trial court unless, viewing the evidence most favorably in support of the court's decision, we conclude no reasonable judge could have made the order. (*Alicia B. v. Superior Court, supra,* 116 Cal.App.4th at p. 863.)

Grandfather does not dispute that the court's decision ultimately turns on its determination of the child's best interest. Grandfather's approval under the resource family process did "not guarantee an initial, continued, or adoptive placement of a child" with him. (§ 16519.5, subd. (c)(6).) It only ensured that Grandfather would be eligible for placement and considered before nonrelatives and those who do not qualify as a resource family. (See § 361.3, subds. (a), (c)(1); *In re Antonio G.* (2007) 159 Cal.App.4th 369, 376.) When deciding where to place the child, the court must exercise its independent judgment, determine the child's best interest, and weigh the other factors in section 361.3. (*Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1033; *Alicia B. v. Superior Court, supra,* 116 Cal.App.4th at pp. 862–863.)

The trial court did not abuse its discretion when it declined to place J.J with Grandfather. The court was understandably concerned by Grandfather's potential mental health issues, which included a possible suicide attempt, a diagnosis of posttraumatic stress disorder, and potential memory impairment. (See § 361.3, subds. (a)(7)(A) [relative's ability to provide safe, secure environment], (a)(8)(A) [safety of relative's home].) The court must also consider whether Grandfather had a history of child abuse or neglect (§ 361.3, subd. (a)(5)), which makes relevant the unresolved questions surrounding Grandfather's two children who were adopted in Indiana, notwithstanding the amount of time that had passed since those adoptions. Grandfather's resistance to signing releases for the mental health and child welfare records raised red flags. There is some evidence, moreover, to support the concern that Grandfather was aligned with Mother (his daughter) and would not protect J.J. from her—Grandfather was asked to bring his fiancé to a meeting on safety but instead brought Mother; Grandfather and Mother used racist and profane language in a conference call with the Agency; Mother

had previously used Grandfather's address as her address, and J.J. reported she may have lived with Grandfather; and Mother admitted she had sabotaged placements of her other children.

Grandfather dismisses this evidence variously as irrelevant, unsubstantiated, lacking detail, "ancient history," or pretextual. On appeal, however, we must view the evidence most favorably in support of the court's decision. (*Alicia B. v. Superior Court, supra,* 116 Cal.App.4th at p. 863.) We cannot substitute our interpretation of the evidence for the trial court's. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 319.) Moreover, we do not fault the court for being concerned about the missing mental health and child welfare records. The records may have confirmed, supplemented, or contradicted what Grandfather had already disclosed; it was impossible to know without seeing them.

Grandfather contends the Agency thoroughly investigated him in the family resource approval process, and the Agency should not have reopened or duplicated that process by attempting to secure his mental health records and the Indiana child welfare records. We agree the family resource process should be swift and comprehensive. (See Seiser & Kumli, Cal. Juvenile Courts Practice and Procedure, *supra,* § 2.127[9], pp. 2-459 & 2-460.) For a variety of reasons, this process was neither. But the bottom line is Grandfather's approval as a resource family does not entitle him to placement or preclude the court from considering additional relevant evidence. (§§ 361.3, subd. (a) [court must determine whether placement with relative is "appropriate" based on specified factors]; 16519.5, subd. (c)(6); see *In re Stephanie M., supra,* 7 Cal.4th at pp. 320–321 [no evidentiary presumptions regarding child's best interest].)

Finally, we summarily reject Mother's constitutional arguments, which are conclusory and undeveloped. (See *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115–1116.)

DISPOSITION

The May 22, 2018 order denying placement with Grandfather is affirmed.

_____
BURNS, J.

WE CONCUR:

_____
SIMONS, Acting P. J.

_____
NEEDHAM, J.

A154564